IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CASE NO.: **CWP No.2375 of 2002**

DATE OF DECISION: February 14, 2007

91670 Ex.EMP-I BALDEV SINGH ...PETITIONER

VERSUS

UNION OF INDIA AND OTHERS ...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE ASHUTOSH MOHUNTA.

PRESENT: MR. B.D. SHARMA, ADVOCATE FOR THE PETITIONER.
MR. S.K. SHARMA, ADVOCATE FOR UNION OF INDIA.

ASHUTOSH MOHUNTA, J. (ORAL)

The petitioner has prayed for quashing the order Annexure P-2 & P-9 by which his disability pension was discontinued by the respondents. The petitioner has also prayed that in case the disability pension cannot be granted to the petitioner then in the alternative he be granted service element of the disability pension in terms of Regulation 186(2) of the Pension Regulations for the Army.

A perusal of the order shows that the petitioner who was enrolled in the Navy on 17.3.1966, as a Boy was granted temporary disability pension as he suffered from a disease which was diagnosed as AMBOEBIC LIVER ABSCECC (ICD-572). In view of the disability of the petitioner he was invalidated out of the military service in the year 1977, as his disability was assessed at 40%. The disability of the petitioner was reassessed and the same was discontinued vide order Annexure P-2 as his disability was reduced to less than 20%. The petitioner was informed that in

case he is aggrieved by the order (Annexure P-2) he can file an appeal within 6 months. However, the petitioner chose not to file any appeal. Thus, the orders passed on behalf of Commodore, Bureau of Sailors (Annexure P-2) is upheld and the petitioner is not entitled to any disability pension.

As far as the service element is concerned, the same has been released w.e.f. 25.11.1985 and on 1.11.1996, the petitioner has been granted service element of Rs.1275/- per month for life. The service element granted to the petitioner from 1985 to 1996 is as follows:-

1. Service element of Rs.40/- P.M. w.e.f. 25.11.85 to 31.12.85.

2. Servicce Element Rs.375/- pM w.e.f. 01.01.86 to 31.12.95.

3. Service Element Rs.1275/- PM w.e.f. 01.01.96 for life.

Counsel for the petitioner has prayed that the petitioner be awarded interest on the delayed payment of service element.

A perusal of the facts narrated above shows that the disability pension of the petitioner was discontinued w.e.f. 25.11.1985. From that very date the petitioner has been granted service element.

Counsel for the petitioner has, however, argued that although the service element has been awarded to the petitioner w.e.f. 25.11.1985, but the service element was given to the petitioner only on 12.9.2003 and therefore, the petitioner is entitled to interest on the delayed payment. Counsel for the petitioner has also relied on Annexure P-5, which is a copy of representation claiming the service element.

From a perusal of the facts, it is clear that the petitioner was

entitled to be granted service element w.e.f. 25.11.1985, but the same was granted to him only on 12.9.2003. No reasons have been given in the written statement filed by the respondents as to why the service element could not be given to the petitioner earlier and further no reasons have been given explaining the delay in grant of the service element. Hence, the petitioner would be entitled to interest.

In view of the above, this writ petition is disposed of with a direction that the petitioner is entitled to interest at the rate of 6% on the delayed payment of service element w.e.f. 38 months prior to the filing of the writ petition i.e., from January, 1999 till the date of payment.

February 14, 2007 **(ASHUTOSH MOHUNTA)**
Gulati **JUDGE**